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8 ADIL K HIRAMANEK, et al.,
9 Plaintiffs,
10 v.
11 L MICHAEL CLARK, et al.,
12 Defendants.

13 Case No. [13-cv-00228-RMW](#)

14 **ORDER DENYING MOTION TO
15 STRIKE AMENDED ANSWER OF
16 BETH MILLER**

17 Re: Dkt. No. 180

18 Plaintiffs move to strike the amended answer of defendant Beth Miller. Dkt. No. 180
19 (Motion); Dkt. No. 177 (Answer).¹ Plaintiffs' claim against Ms. Miller is a claim for "denial of
20 access to the restroom based upon race" in Ms. Miller's individual capacity under 42 U.S.C.
21 § 1983. See Dkt. No. 153 (Order on Motion to Dismiss) at 1-2. The answer includes nine
22 affirmative defenses. Plaintiffs argue that the answer does not meet the *Twombly* and *Iqbal*²
23 standard applied to affirmative defenses. The court does not find this persuasive. The first
24 through fourth affirmative defenses are essentially immunity defenses. These defenses are
25 appropriate and sufficiently pled when read in light of the facts alleged in the complaint and the
26 identity of Ms. Miller, a state employee. The fifth through seventh affirmative defenses
27 adequately explain the basis for Ms. Miller's defenses (i.e., failure to mitigate, plaintiffs at fault,

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¹ Plaintiffs belief that Ms. Miller is in default is noted and is not persuasive.

² *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

1 and lack of standing to seek an injunction) against plaintiffs' prayer for relief. The eighth (statute
2 of limitations) and ninth (28 U.S.C. § 1654) affirmative defenses are sufficiently pled. *See* Dkt.
3 No. 163 (Order granting in part motion to strike answer of Superior Court) at 4. Accordingly,
4 plaintiffs' motion to strike is DENIED.

5 **IT IS SO ORDERED.**

6 Dated: February 18, 2015

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Ronald M. Whyte
8 United States District Judge

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United States District Court
Northern District of California